

ST. REGIS MOHAWK TRIBE,	:	Order Dismissing Appeal and Referring
Appellant	:	Complaint to Bureau of Indian Affairs
	:	
v.	:	
	:	Docket No. IBIA 86-11-A
ACTING DEPUTY ASSISTANT--	:	
INDIAN AFFAIRS (OPERATIONS),	:	
Appellee	:	February 10, 1986

The Board of Indian Appeals (Board) received a notice of appeal from the St. Regis Mohawk Tribe (appellant) on November 5, 1985. After receiving the administrative record on November 26, 1985, the Board issued a notice of docketing on November 29, 1985.

As background to this case the Board notes that on June 13, 1985, the Eastern Area Office, Bureau of Indian Affairs (BIA), returned without action applications for licenses to trade on the Seneca reservations in the State of New York from Elias H. Attea, M. Attea Brothers, and Herzog Brothers. The Eastern Area Director held that the regulations governing trading with Indians, 25 CFR Part 140, did not apply to the Seneca reservations.

On appeal, the Acting Deputy Assistant Secretary--Indian Affairs (Operations) (appellee) reversed a long-standing interpretation of law and concluded that the regulations did apply to the Seneca reservations. In her August 30, 1985, decision, appellee directed the Area Director to reconsider the license applications in light of this conclusion. Appellee stated that her decision was based upon an interpretation of law and would be final 60 days from receipt of the decision unless appealed to the Board.

Because of the statement concerning the right to appeal, the Area Director refrained from reconsideration of the applications until the 60-day appeal period expired. Appellant's appeal was timely received before the expiration of the appeal period.

This case thus comes before the Board on the question of the correctness of appellee's determination that the Seneca reservations in the State of New York are subject to Federal statutes and regulations concerning the issuance of licenses for trading with the Indians. No decision has yet been rendered on the particular applications that gave rise to the present appeal.

On December 17, 1985, the Board received a motion from appellee seeking dismissal of the appeal. Appellee stated that appellant lacked standing to bring the appeal because it made no claim that it had been or would be harmed by any decision regarding applications for traders licenses on the Seneca reservations. Appellee states at pages 2-3 of its motion:

Standing before the Board is governed by 43 C.F.R. § 4.331, which provides in part:

Any interested party affected by a final administrative action or decision of an official of the Bureau of Indian Affairs issued under regulations in Title 25 of the Code of Federal Regulations in a case involving a determination, finding or order protested as a violation of a right or privilege of the appellant may appeal to the Board of Indian Appeals.

Section 4.331 is, in turn, based on 25 C.F.R. § 2.2, which provides that an appeal may be taken from an action or decision of a BIA official "where the action or decision is protested as a violation of a right or privilege of the appellant." In order to have standing to appeal, the tribe must show that the decision being appealed adversely affects its enjoyment of a legally protected interest. * * *

The Tribe has expressed concern that [Federal traders] licenses may be issued in the future for trade on its reservation, but no decision to issue licenses on the Mohawk Reservation has been made. Although portions of the August 30, 1985, decision concern arguments that might be raised with respect to future applications for a license to trade on the Mohawk Reservation, other portions address specifically the history and status of the Seneca reservations. No arguments based on the specific history and status of the Mohawk Reservation were made or addressed. An appeal of a decision concerning the Seneca reservations is not the appropriate vehicle for litigating the applicability of the trader regulations to the Mohawk Reservation.

By Board order dated December 23, 1985, appellant was given until January 24, 1986, to respond to the motion. Appellant filed a response on January 30, 1986, stating:

We understand that the issuance of this license giving anyone the exclusive rights to deal with tobacco and gas and fuel oil may cause undue hardships on our Mohawk people.

* * * * *

It is our understanding that the issuance of this Traders license may adversely affect our tribe and individual Tribal members.

We request information on the impact of the Traders license on our community so we can respond before the final decision. We are very concerned about how far reaching this decision is.

The Board has carefully reviewed the background of this appeal and of the relationship between appellant and the Seneca Nation. Although appellant and the Seneca Nation were both members of the Six Nations, they were historically treated as separate. Thus, the creation of reservations for the Senecas and for appellant was accomplished in different ways. A decision dealing with the Seneca reservations does not, therefore, necessarily affect appellant's rights or privileges on its reservation. The Board thus holds that this appeal must be dismissed for appellant's lack of standing.

However, the Board further holds that appellant's filings, taken as a whole, set forth a complaint under the terms of 25 CFR 2.1(e): "'Complaint' means a written request for correction of an action or decision claimed to be legally or administratively incorrect but not violative of the complainant's own legal rights or privileges." Under 25 CFR 2.2, complaints "may be either informally or formally made and ordinarily first presented to the office immediately responsible for the action or decision questioned and thereafter if necessary to higher officials." Appellant seeks clarification of the impact of appellee's decision as it may apply to its reservation and its members. When it has received such clarification, appellant will then be able to ascertain whether or not its own rights or privileges are adversely affected by the decision. Should such clarification show that the decision would affect appellant's rights or privileges, appellant would no longer fall within the definition of complainant, and thus may have the requisite injury to have standing to appeal the decision.

Finally, the administrative record does not show distribution of appellee's decision to the Seneca Nation. If the Seneca Nation has not been served with a copy of the August 30, 1985, decision, appellee is ordered to serve the Nation immediately.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is dismissed without prejudice because of appellant's lack of standing. The matter is referred to the Acting Deputy Assistant Secretary--Indian Affairs (Operations) for treatment as a complaint within the meaning of 25 CFR Part 2.

Jerry Muskrat
Administrative Judge

Franklin D. Arness
Alternate Member

Bernard V. Parrette
Alternate Member